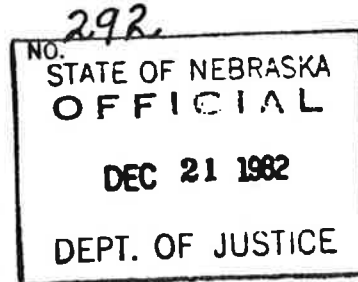


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

December 16, 1982



PAUL L. DOUGLAS  
Attorney General  
GERALD S. VITAMVAS  
Deputy Attorney General  
JOHN R. THOMPSON  
Deputy Attorney General

SUBJECT: Probate Fees.

REQUESTED BY: Joe C. Steele, Nebraska State Court Administrator.

OPINION BY: Paul L. Douglas, Attorney General,  
Frank J. Hutfless, Assistant Attorney General.

QUESTION: If an estate proceeding is commenced prior to July 1, 1982 (the effective date of LB 928), but the estate fees are not paid prior to that date, should those estate fees be paid in an amount specified by the law in effect prior to July 1, or in an amount specified by the law in effect subsequent to July 1?

CONCLUSION: The amount of the estate fees to be paid is to be determined according to the law in effect at the time the fees are paid.

We can find no authority in the Nebraska Probate Code, nor can we find any Nebraska cases directly on point, which would answer the question asked by the State Court Administrator. Nevertheless, and even though there is a minority of authority to the contrary, ". . . the right to costs and the amount and items taxable are as a general rule governed by the statutes in force at the time of the termination of the action . . . and not by those in force at the commencement of the action." 20 C.J.S. Costs, §3, Page 263.

It is competent for the Legislature, at any time during the progress of a suit to increase or diminish costs and court fees "and a statute establishing costs and fixing court fees applies to pending cases equally with those arising after its enactment." 20 C.J.S. Costs, §3, Page 264.

Given the majority rule just stated, and apparently followed by a number of other jurisdictions within the Eighth Circuit, we conclude that the estate settlement fee which must be paid is the

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fee in effect at the time payment is made. If payment is made after July 1, 1982, the fees as set forth by LB 928 would apply.

Very truly yours,

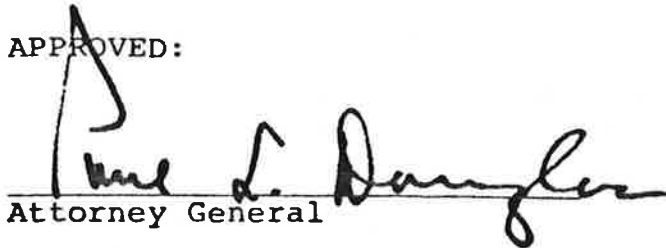
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FJH:jmh

APPROVED:

  
Attorney General